"JURISTS" OR "CASE LAWYERS"—WHICH ARE MORE DESIRABLE AS PRACTITIONERS?

Mr. Charles A. Boston, of New York, in the course of an interesting address to the section of Legal Education at the last meeting of the American Bar Association, at Washington, October 19, 1914, gave his views of a practicing lawyer's idea of the kind of training best fitting a lawyer for the practice of his profession.

Mr. Boston confessed to being schooled himself in the old fashioned way, through tiresome lectures by active practitioners at the fag end of the day followed by experience gained in a law office, but declares he has come to believe that the old methods were wrong. He said:

"I am now convinced by these years of observation that starting with a man of intellectual ability, the best preparation for an able counsellor is the most modern training by the case system of instruction as followed in some of the leading institutions, supplemented by a position upon one of the law reviews calling for constructive work."

Mr. Boston modestly refrains from discussing the point whether his own recognized ability as a legal scholar is an exception to the general rule or whether or not there may not be other lawyers, who, starting with a good intellectual foundation, have attained to a considerable degree of legal scholarship despite the inferior methods used by their legal instructors. At least it appears that at least a few jurists have arisen in this country and in England long before the "case" system of instruction was discovered.

But while we share some misgivings with respect to Mr. Boston's confident assurance that the "case" system of instruction will necessarily produce "jurists," we are quite ready to agree with his next contention that, waiving the "methods" by which jurists are made, a lawyer is a better lawyer by reason of a thorough grasp of the history and principles of jurisprudence than one who is merely "expert" in the handling of the decisions and statutes of his own state. On this point, Mr. Boston said:

"I am not in sympathy with the sentiment voiced that what we

want at the bar is not jurists but practical lawyers; not men who know what the law ought to be, but what it is; not men who know the law of some distant state or the result of a comparison of the laws of Hamurabi with the constitution of Oklahoma, but men who know that the local court of last resort in a recent case has determined that the law is thus and so, no matter whether this is antiquated or contrary to reason or the otherwise universal weight of authority. For, it is argued, what profiteth it a client if he have the most learned pundit or solemnest Theban for his lawyer, who knoweth all the law as it ought to be, if he loseth his cause in ignorance of what the Court of Appeals hath said it is; hence at a bar examination the candidate must know, not all the discussion and reasons pro and con upon a much controverted point, but that the Court of Appeals hath wiped out the past and put an end to all controversy and furnished a sufficient reason by its latest ipse dixit. Unto a man with such standard a careful study of all Court of Appeals cases, and an accurate recollection of each, would be a sufficient education, supplemented from week to week by the memorizing of others as they continue to come from the press. I doubt, of course, if such a practitioner could go through life without at some time awakening his intelligence and doing a little inductive cogitation along by-ways that the Court of Appeals has not touched; but his intelligence, I surmise, would be too apt to be stupefied by the great task for his recollection. Personally, I think that bar is most satisfactory to its clients which is composed most largely of jurists; and that the people will profit most by such standards."

Mr. Boston then refers to a rule promulgated by the New York Court of Appeals indicating the character of questions to be asked of applicants for admission to the bar, which is worthy of being pressed upon the attention of every board of law examiners in the country. The rule is as follows:

"The State Board of Law Examiners is instructed so to frame the questions propounded to candidates for admission to practice as to permit of a reasoned answer to a question. The board is instructed, in that respect, to formulate questions, whether based upon decided cases or upon statutes, so as to ascertain the ability of the candidate to apply his knowledge of legal prin-

ciples and of statutory rules, and to explain the method of their application by him, rather than to elicit answers, the correctness of which will rest upon the candidate's power of memorization. The marking of a candidate should be measured by the reasoning power shown and not, wholly, by mere correctness."

While the subject of legal education has advanced greatly in the last generation, too much stress should not be put upon "methods" used in this or that law school. The ultimate result in all cases, it seems, depends largely on the ability and energy of the student coupled with the enthusiastic co-operation of an instructor who knows how to teach.

In a trip which the writer made not many years ago we were privileged to sit under the teaching of "professors" in a number of law schools from St. Louis to Boston. Our experience led us to the conclusion that instruction under the "case" system was as tiresome under an uninteresting instructor as was the same lecture under a text book lecturer. It seems that the personal equation in legal instruction is the factor that determines its effectiveness.

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in the *Central Law Journal.*